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**The Responsibility of Professional  
Football Clubs under the  
Organizational Model Rules**

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## An Introduction to ATINER's Conference Paper Series

ATINER started to publish this conference papers series in 2012. It includes only the papers submitted for publication after they were presented at one of the conferences organized by our Institute every year. The papers published in the series have not been refereed and are published as they were submitted by the author. The series serves two purposes. First, we want to disseminate the information as fast as possible. Second, by doing so, the authors can receive comments useful to revise their papers before they are considered for publication in one of ATINER's books, following our standard procedures of a blind review.

Dr. Gregory T. Papanikos  
President  
Athens Institute for Education and Research

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## **The Responsibility of Professional Football Clubs under the Organizational Model Rules**

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### **Abstract**

Legislative decree n. 231/2001, which rules on the responsibility of legal bodies regarding unlawful administrative acts based on offenses (entities with juridical personality and also associations without juridical personality), has been adopted by the Italian professional football. Article 7 of the new statute of F.I.G.C. states explicitly that “Federal Council shall issue the necessary rules and monitors so that the clubs participating in national championships implement patterns of organization, management and control designed to prevent the execution of acts contrary to the principles of fairness, loyalty and probity in every actions they carry out”.

On April 20, 2012 the assembly of the Main League adopted its own organizational model and ordered to issue guidelines under which the clubs must comply by adopting a consistent internal model, aimed at the prevention of sport frauds. This has resulted on the prevision imposed on clubs of adopting a consistent organizational model as a fundamental requirement to participate to the Main League, beginning from season 2013/2014.

Likewise, during the meeting held on April 27, 2012, Federal Council of F.I.G.C. approved its own organizational model effectively in force from July 2012. Specifically, it has been established that the Federation will carry out an internal survey together with the clubs regarding the relationships with groups of fans. Organizational models of each club will become mandatory to be able to intervene legally with two aims: 1) to strengthen penalties in case of omitted complaint to counteract episodes of conspiracy of silence; 2) to improve the system of exemptions for clubs in good standing with the organizational models approved by F.I.G.C. and competent Leagues.

In conclusion, organizational models are valuable tools directed to the prevention of sport frauds and to the limitation of hooliganism.

**Keywords:**

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The legislative decree number 231 of 2001 introduces the accountability of corporations for unlawful administrative actions, which set a crime (this includes corporations with or without legal status). Specifically, the corporation is responsible for alleged crimes committed in its interests or with the aim of taking an advantage. This represents the idea of alleged accountability:

- a) by people who represent the corporation or have administrative as well as managerial functions in the corporation or in its entities (financially and functionally autonomous). In addition, by people who manage and control substantially the corporation;
- b) by people under the supervision or directions of the subjects mentioned above (the concept of accountability provided in article 2049 in the Italian civil code according to some doctrine).

This decree plays a direct impact on football clubs in consideration of the approval of article 7 of the new Statute which affirms that “*the Federal Council issues the necessary regulation and supervises so that the clubs participating in the national championships adopt organizational, managerial and surveillance models suitable for preventing the fulfillment of actions contrary to fair play and probity in every activities*”. Basically, these are the exact principles mentioned above in the decree.

In particular, on April 20<sup>th</sup> 2012, the Assembly of the Main League (the A League) adopted its own ‘Organizational Model’ and decided to issue guidelines addressed to the clubs. The clubs should conform to these guidelines by adopting a coherent internal model with the additional aim of fighting the phenomenon of match fixing. From a concrete point of view, this has been transposed in the provision that requires for clubs the adoption of a consistent organizational model from the beginning of season 2013-2014.

At the same time, on April 27<sup>th</sup> 2012, the Federal Council of the National Football Federation approved the applicability of its own Model from July 1<sup>st</sup>, 2012. The Federation will proceed to an internal acknowledgement with the clubs regarding the relationships with the supporters. Each club will have to comply with the provision of a compulsory organizational Model regarding safety issues, to be able to intervene legally:

1) on the one hand, to strengthen sanctions in case of omitted notifications to the authorities to fight conspiracies of silence; 2) on the other hand, to enhance the value of the clubs who behave correctly and who will have their Models approved by the Federation and the Leagues.

The Code of Sport Justice will comply according to this (art. 13). Specifically article 13 of the Code (which regards the extenuating circumstances for the supporters’ behaviors) puts the following among these extenuating circumstances: “*the club has adopted and substantially realized, before the event, organizational and managerial models coherent to prevent behaviors similar to those which took place*”.

To ensure that the adoption of the Model is effectively able to avoid the accountability among the club, it is necessary that the Model is directed to the prevention of sports crimes that, according to the Code of Sport Justice, could lead to the objective accountability for the illicit committed by its own member or other subject linked to the club (also supporters). This in addition to the crimes provided in the Decree 231.

If on the one hand it will be a burden on the clubs to comply, on the other hand it will represent a concrete and effective set of juridical instruments for both the ordinary and sports justice.

Regarding the crimes provided in the decree n. 231, the areas of application for the potential risk of liability of the club are:

- accounting and budget management (in particular for the market players);
- gifts and entertainment expenses used as mean of corruption;
- relationships with public entities like the public administration, the National Football Federation when it acts in its public role;
- personnel hiring and professional advices;
- sponsorship and advertising;
- activities that involve cash operations;
- management of financial resources;

Instead, regarding the liability for sports offence, the relevant areas are:

- detrimental statements;
- ban bets and mandatory reporting;
- sport offence and mandatory reporting;
- violations in the managerial and economic;
- association aimed at committing offenses;
- duties and prohibitions on enrollments, transfers, disposals and corporate controls;
- discriminatory behaviors;
- prevention of violent events (also by the supporters);

The spectrum of efficacy of the decree is indeed getting larger. It is evident by the enucleating of risks typically related to the sport system like, for example, the objective accountability and sport offences.

On the practical level, an organizational model, which combines both federal (by the sport system) and national (by the State) legislations, already exists: the *Novara* Football Club. Next to the provision of the crimes distinctly divided in typical, common and atypical, the model also recognizes risk areas such as the disciplinary sport accountability. Relating to this last concept, it is no surprise that the legislator expressly refers to the duty of probity and fair play. On the contrary, it is to underline that this duty is also provided for subjects not belonging to the sport system. In particular, loyalty to the public administration, public officials and entities that can act such public bodies like the National Football Federation, which is expressly mentioned.

What we really need to underline here is that a typical and exclusive category born to define a principle behind the whole sport system has been used to regulate an activity with the public administration: the principle of fair play.

Sports law is regulated by a large number of legislative sources so that in the sport system we have many regulations issued by the federations. Fair play, though, has a place apart in this scheme: it is a legal principle not just and ethic one. We can verify this, for example, in article 1 of the Football Code of Sport Justice, or in the 2004 regulations or, better, in the idea of sport itself, which is beyond the idea of the State. Basically, it is the driving principle of the whole sport system. In other words, the State could never say that sport is a concept totally disconnected from fair play because fair play regulates every action in the sport system giving it a completeness as a system.

From a strict legal point, though its importance, the doctrine did not study it with the exception of a few. In these cases, its relevance has been underlined.

From the sport case-law point of view:

- a) fair play regulates every aspect
- b) it shapes the interpretation of the other rules
- c) it gives voice to the 'spirit' of sport itself

That is why the match fixing scandal is a phenomenon 'outside' the sport system.

This said, fair play is:

- a) self-discipline in the face of provocations;
- b) fight under the banner of sportiness without any disturbances;
- c) duty of chivalry and healthy competitive spirit;
- d) 'lifeblood' of any business that may qualify as sport.

In this perspective, then, failure to comply is betrayal of the purpose of sport and hence behavior stranger to sport itself.

From the state case-law point of view, the line indicated by the judges looks similar:

- a) in the name of fair play it legitimates sports law to 'impose strict rules';
- b) states that every athlete should inspire to fair play "not only during athletic competition, but in every moment of her life of relationship with the association and other associated" (this stated by the State Council in 1973);
- c) configures accountability if exceeded the limits of loyalty

As already mentioned, for the assessment of social accountability, this principle of fair play, although it does not belong to the 'state system' in the terms we explained, has been assessed as a criterion for evaluation of activities



relevant to the state system itself. This is more relevant in a context where, as stated, the activity of the club specifically relates to relations with the public administration. In this category the National Football Federation falls in as well when it comes to the potential accountability.

The situation we described happened using 'pure' rules and principles belonging to the sport system directly to the cases.

Actually, it is not really a 'new' doctrinal operation. I already mentioned it in 2005 in the *Crotone* case. In that case, a spectator was hurt during the football match between *Crotone* and *Palermo* because of violent actions committed by the *Palermo*'s supporters. In the application of the federal rule of the objective accountability, the judge ruled the direct accountability of the *Palermo* club. This rule states the objective accountability of the club for the actions and behavior of its leaders and supporters, both on its own field, and on that of rival clubs".

So, the 'civil' judge directly referred to sport rules to determine liability for damages.

Recently, the same operation has been done in one case-law regarding the accounting area:

In the present case several members of football clubs, sports managers, football referees, sports journalists and assistants were involved. Their involvement was proved by wiretapping that revealed a dense series of contacts between the protagonists of the story, which tended to favor some football clubs to the detriment of other during the course of the championship. The crime was realized by match fixing by the choice of referee appointment, and by planning appropriate strategies to achieve undue sports results even with the use of intimidation.

The case was set in the context of sports justice.

The judge recognized accounting accountability for some referees and assistants "*for injury to the image of the public administration*". In particular, the judge argued that in this case "*evidence of the damage to the image is of common domain. It consists in the violation, unprecedented, of the fundamental principle of fair play*".

The court spoke specifically of damage to the image of the federation caused by the unfair conduct of certain members.

Indeed, the National Football Federation is the bearer of the interest affected which bases the damage to the image of public administration, since the public character of the activities the Federation does such as "the control in order to the proper functioning of competitions and professional sports leagues", as provided in article 23, point 1 of the Statute of C.O.N.I. (Olympic National Italian Organization) which was approved by decree in 2012. As known, it specifically identifies the activities of sports federations to be considered 'public', as well as those whose public character is expressly provided for by the law, and among them by exactly the aforesaid control of the proper functioning of the football championship.

But if on the one hand we have a definite violation condemned in a sport judgment, on the other hand we have a criminal judgment of discharge and a judgment of conviction by the accounting courts.

Our thought is that in reality nothing really changes in consideration of the judgment by the accounting Court. What we really need to keep in mind is the awareness that the notion of fair play itself is to be drawn from the sport system that is the sport consciousness.